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and Rob Fusari Productions, LLC

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CALVIN GAINES,

Plaintiff-Counterclaim Defendant,

-v-

ROB FUSARI, ROB FUSARI
PRODUCTIONS, LLC,

Defendants-Third Party Plaintiffs,

v.

STEFANI GERMANOTTA aka LADY
GAGA,

Third-Party Defendant.

**Civil Action No. 11-CV-4433
(WJM/MF)**

**(PROPOSED) FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND
PROPOSED ORDER GRANTING DEFENDANS/THIRD-PARTY PLAINTIFFS'
MOTION TO SEAL**

Pursuant to D.N.J. Local Civ. R. 5.3(c)(2), the Defendants/Third-Party Plaintiffs, Rob Fusari ("Fusari") and Rob Fusari Productions (collectively, "the Defendants"), hereby submits their proposed Findings of Fact and Conclusions of Law in support of their Motion to Seal filed with the Court on or about October 22, 2012. Local Civil Rule 5.3(c) places the burden of proof on the moving party to show why a motion to seal or other restriction to public access should be granted.

The Rule requires a showing of:

1. The nature of the materials or proceedings at issue;
2. The legitimate private or public interests that warrant the relief sought;
3. The clearly defined and serious injury that would result if the relief sought is not granted; and
4. Why a less restrictive alternative to the relief sought is not available.

The Defendants seek to seal (a) their Statements of Material Fact ##1-2 in response to the Statement of Material Facts submitted by non-party Stefani Germanotta (“Germanotta”); and (b) portions of pages 3, 4, 5, and 6 of the Defendants’ Opposition to Germanotta’s Motion for Summary Judgment.

Set forth below are the findings of fact and conclusions of law addressing the Defendants’ Motion, which, for the reasons explained, is granted.

I. Findings of Fact

A. The Nature of the Materials or Proceedings at Issue

The materials at issue are documents the Defendants were required to draft in order to properly oppose Germanotta’s Motion for Summary Judgment.

Germanotta’s Motion contains highly confidential information, subject of her own Motion to Seal, including information regarding a certain confidential document between Germanotta and the Defendants. Because Germanotta’s Motion refers to this confidential information, it was absolutely necessary that the Defendants’ Opposition refer to such information.

B. The Legitimate Private or Public Interests Which Warrant Relief

Germanotta has represented to the Court in her Motion to Seal that she has an

interest in not public disclosing the terms of a confidential document between herself and the Defendants. The Defendants have a similar interest in not revealing those terms.

C. The Clearly Defined and Serious Injury That Would Result if The Relief Sought is Not Granted.

Germanotta has previously represented to this Court that she specifically negotiated and paid consideration for the confidential document with the Defendants, the terms of which are to be kept confidential. The Defendants represent that they have an interest in maintaining the privacy of this confidential document.

Public disclosure of the contents or terms of the confidential document would seriously injure Germanotta, as she represented to the Court, by depriving her of a benefit negotiated between the parties. Additionally, the Defendants would be harmed insofar as there are significant financial repercussions to them should the terms of that document be revealed.

D. Why a Less Restrictive Alternative to the Relief Sought is Not Available.

The Defendants only seek to redact the very specific portions of their Statement of Material Facts and Memorandum of Law that cite to or disclose the confidential documents. They do not seek to seal anything beyond that.

II. Conclusions of Law

A. The Nature of the Materials or Proceedings at Issue

The Defendants' Statements of Material Fact ##1-2, and the specified portions of their Memorandum of Law reference or contain highly confidential information.

B. The Legitimate Private or Public Interest Which Warrants the Relief Sought.

Protecting the confidentiality of agreements between private parties is a legitimate

public interest, the protection of which warrants the sealing of court documents. *See, Brumley v. Camin Cargo Control, Inc.*, 2012 U.S. Dist. LEXIS 11702, 4 (D.N.J.).

Both Germanotta and the Defendants have identified legitimate private or public interests that warrant sealing those portions of the Defendants' papers that necessarily refer to the confidential document and/or its terms.

C. The Clearly Defined and Serious Injury That Would Result if the Relief Sought is Not Granted.

Germanotta has represented to the Court in her Motion to Seal that she would be seriously injured by the public disclosure of the specified document because such disclosure would constitute an unwarranted evisceration of a benefit for which she contracted. The Defendants would be seriously harmed because the document is indeed confidential, the parties contracted for its confidentiality, and serious ramifications would flow from revelation of its terms. The terms of the document should be kept confidential. *See, Leap Sys. v. Moneytrax, Inc.*, 2012 U.S. Dist. LEXIS 53167, 28-29 (D.N.J.).

D. Why a Less Restrictive Alternative to the Relief Sought is Not Available.

By seeking to seal only those portions of their Statement of Material Facts and opposition Memorandum that disclose confidential information, the Defendants have sought the least restrictive option to protect their and Germanotta's interests and prevent serious injury. *See, Goldenberg v. Indel, Inc.*, 2012 U.S. Dist. LEXIS 479, 11 (D.N.J.)

For these reasons, it is hereby ORDERED on this __ day of ____, 2013, that the Defendants' Motion to Seal is GRANTED, as follows:

The Court hereby moves to seal the following portions of the Defendants' opposition papers to Germanotta's Motion for Summary Judgment:

(a) SMF ##1 and 2 in the Defendants' Opposition to Germanotta's Statement of Material Facts in Support of Her Motion; and

(b) The following portions of the Defendants' Memorandum in Opposition to Germanotta's Motion for Summary Judgment: Pages 3 (Point Heading I); 4 (2d sentence); 5 (all but first full paragraph); and 6 (top partial paragraph).

Dated: _____

By: _____
MARK FALK, U.S.M.J.